

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONTE BOOKER,

Defendant.

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CASE NO. 1:13-CR-00050

OPINION & ORDER
[Resolving Doc. [211](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On March 12, 2013, a federal jury convicted Defendant Booker of attempted possession with the intent to distribute 5 kilograms or more of cocaine.¹ On July 17, 2013, this Court sentenced Booker to 200-months imprisonment and five-years supervised release.²

On February 20, 2020, this Court denied Booker's motion to reduce his sentence and for compassionate release.³ Booker appealed.⁴ Booker now moves for a certificate of appealability, permission to proceed in forma pauperis, and for appointed counsel.⁵

Booker's request for a certificate of appealability under 28 U.S.C. § 2253 is **DENIED**. 28 U.S.C. § 2253 governs certificates of appealability when an appeal is taken from the denial of a habeas claim. Booker is not appealing an unfavorable habeas determination, so the statute is not applicable to Booker's appeal.

¹ Doc. 32.

² Doc. 58.

³ Doc. 209.

⁴ Doc. 210.

⁵ Doc. 211.

Booker's request to proceed *in forma pauperis* on appeal is **DENIED**. Booker may not proceed *in forma pauperis* if this Court certifies, before or after the notice of appeal, that the appeal is not taken in good faith.⁶

Booker's appeal is not taken in good faith. He is ineligible for the relief he seeks. The Sentencing Commission has not reduced Booker's sentencing range making him ineligible for a reduction.⁷ He does not qualify for compassionate relief because it cannot be granted on the basis of rehabilitation alone.⁸

Furthermore, Booker's assertion that he requested *forma pauperis* status in his underlying motions is not true. And, even if Booker had inserted such request into his multiple filings, it is illogical to imagine Booker could request *forma pauperis* status in his district court filings for an appeal of the Court's not-yet-issued decision.

Finally, Booker's request for counsel on appeal is **DENIED**. This Court has issued multiple opinions in this case notifying Booker that it does not have authority to appoint counsel on appeal.⁹ Nothing has changed since Booker's last appeal.

For the foregoing reasons, the Court **DENIES** Defendant's motion.

IT IS SO ORDERED.

Dated: March 4, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁶ Fed. R. App. P. 24(a); *Bruce v. Bradshaw*, No. 1:04 CV 11447, 2007 WL 1459255, at *1 (N.D. Ohio May 15, 2007) (noting that good faith requires a showing that the issues on appeal are not frivolous).

⁷ Doc. 209 at 1-2.

⁸ *Id.* at 3 (citing 28 U.S.C. § 994).

⁹ Docs. 188, 191.